



1984 — 25 Years — 2009

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August 17, 2009

Ms. LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
Bldg. F – 1<sup>st</sup> Floor  
Austin, Texas 78711-3087

**HAND DELIVERY**

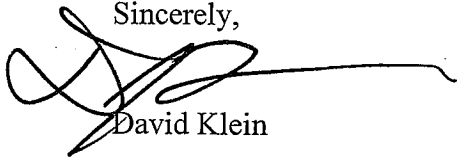
Re: Aqua Water Supply Corporation's Response to Hearing Requests Regarding Its  
Application for a Texas Pollutant Discharge Elimination System Permit, No.  
WQ001483300; TCEQ Docket No. 2009-0896-MWD

Dear Ms. Castañuela:

Enclosed please find one (1) original and eight (8) copies of Aqua Water Supply Corporation's Response to Hearing Requests in the above-referenced matter.

Please return a file-stamped copy for our records. Thank you for your attention to this matter.

Sincerely,



David Klein

DJK/mab  
0707/41/ltr090817

Enclosures

cc: Service List  
John Burke  
David Fleming  
Robin Lloyd (w/o enclosures)

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 AUG 17 PM 3:46  
CHIEF CLERKS OFFICE

**TCEQ DOCKET NO. 2009-0896-MWD**

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**IN THE MATTER OF THE  
APPLICATION OF AQUA WATER  
SUPPLY CORPORATION FOR TPDES  
PERMIT NO. WQ0014833001**

§ **BEFORE THE TEXAS COMMISSION**  
§  
§ **ON**  
§ **ENVIRONMENTAL QUALITY**

2009 AUG 17 PM 3:46  
CHIEF CLERKS OFFICE

**AQUA WATER SUPPLY CORPORATION'S RESPONSE TO HEARING REQUESTS**

***TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:***

COMES NOW, Aqua Water Supply Corporation ("Aqua WSC" or "Applicant") and files this Response to Hearing Requests ("Response") under 30 Texas Administrative Code ("TAC") § 55.209, regarding its application, as amended, for Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014833001 (the "Application"), and would respectfully show the following:

**I. INTRODUCTION**

Aqua WSC is a nonprofit water supply corporation organized under the laws of the State of Texas and operating pursuant to Chapter 67 of the Texas Water Code, and it has provided retail utility service to its members since its incorporation in 1969. Aqua WSC holds water Certificate of Convenience No. 10294 ("CCN"), which encompasses a service area of approximately 1,000 square miles, located within portions of Bastrop, Caldwell, Travis, Fayette and Lee counties. Additionally, Aqua WSC possesses sewer CCN No. 20962, authorizing it to render retail sewer service to an area of approximately 170 square miles located generally in the western portion of its retail water CCN service area.

The Application, as amended, proposes that Aqua WSC will treat domestic wastewater at the Double Eagle Wastewater Treatment Plant ("Double Eagle WWTP"), which will be located within the Double Eagle Ranch subdivision, approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas. As indicated by the Executive Director's revised draft permit, received by Aqua WSC on December 11, 2008 (the "Draft Permit"), the effluent generated from the Double Eagle WWTP will be discharged to Moss Branch, thence to Dry Creek, and thence to the Colorado River below Town Lake in Segment 1428 of the

Colorado River Basin. The Double Eagle WWTP will be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units will include bar screens, aeration basins, final clarifiers, sludge digesters and a chlorine contact chamber.

The Application, as reflected by the terms of the Draft Permit, represents a responsible approach to collecting and treating domestic wastewater generated by the Double Eagle Ranch subdivision, and discharging that effluent in accordance with the Texas Water Code and rules of the Texas Commission on Environmental Quality ("TCEQ"). The effluent limitations proposed for the Interim and Final Phases of the Draft Permit constitute some of the TCEQ's most stringent limitations for TPDES permits and will maintain and protect the existing instream uses. Specifically, the Draft Permit sets the following daily average limitations:

- Carbonaceous Biochemical Oxygen Demand (5- day) 5.0 mg/l
- Total Suspended Solids 5.0 mg/l
- Ammonia Nitrogen 2.0 mg/l
- Total Phosphorus 1.0 mg/l
- E. Coli Colonies per 100 ml 126
- Minimum Dissolved Oxygen 4.0 mg/l

(collectively, these limitations are referred to as the "Effluent Limitations").<sup>1</sup>

According to the TCEQ's website, there were 10 requests for a contested case hearing in this matter, including a request from the Lower Colorado River Authority ("LCRA"), the current sewer CCN holder over the Double Eagle Ranch subdivision.<sup>2</sup> On May 15, 2009, however, the LCRA withdrew its request for a contested case hearing in this matter.<sup>3</sup> After a review of the hearing requests, it is Aqua WSC's understanding that six hearing requests remain from the following 11 individuals: (1) Darren Carroll, (2) Rick Clemens, (3) Lori Zimmerman, (4) Darlene and William Pendell, (5) Bennie and Elizabeth Wallace, and (6) Catherine Roberts, Marcy Bernasconi, Dinah Van Peski, Bryce Johnson, and Bill Pendell (these 5 requestors collectively signed the hearing request from the River Crossing Improvement Association ("RCIA")).

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<sup>1</sup> Draft Permit at 3-4.

<sup>2</sup> A map identifying the location of these hearing requestors is attached hereto as Exhibit A.

<sup>3</sup> May 15, 2009 letter from William Medaille, Associate General Counsel of LCRA, to the TCEQ, attached hereto as Exhibit B.

None of these remaining requestors meet the TCEQ's prerequisites in 30 TAC §§ 55.203 and/or 55.205 to be considered an "affected person" in this matter. In short, based upon (i) the location and proximity of the remaining requestors to Aqua WSC's Double Eagle WWTP site and the proposed discharge route, and (ii) the issues raised in those hearing requests, none of the requestors in this matter have presented justiciable interests that apply to TPDES permit applications or are unique from the general public. Additionally, the RCIA's request for a contested case hearing fails to meet the TCEQ's associational standing requirements. Therefore, the TCEQ should deny the hearing requests, grant the Application, and issue the Draft Permit without modification.

## **II. PROCEDURAL HISTORY**

On July 9, 2007, South Central Water Company ("SCWC") filed this wastewater discharge permit Application with the TCEQ for approval to operate the Double Eagle WWTP. The Application requested authorization to discharge effluent from the Double Eagle WWTP in the following amounts: 0.05 million gallons per day ("mgd") in interim phase 1, 0.15 mgd in interim phase 2, and 0.75 mgd in the final phase.

The Application was declared administratively complete by the Executive Director on July 20, 2007, and SCWC published the Notice of Application and Intent to Obtain Water Quality Permit ("NORI") in the *Bastrop Advertiser*, a newspaper of general circulation in Bastrop County, on August 25, 2007. On October 11, 2007, SCWC published the Notice of Application and Preliminary Decision ("NAPD") in the *Bastrop Advertiser*. The only landowner adjacent to the Double Eagle WWTP and at least the first mile of the discharge route is Double Eagle Estates, Ltd.

As a result of the notification process, the TCEQ received comments, requests for a public meeting, and the aforementioned contested case hearing requestors on the Application. A public meeting was held on July 15, 2008, to provide information on the Application. At the public meeting, representatives of SCWC announced that (i) the Application would be transferred to Aqua WSC and (ii) the Application would be amended to reflect Aqua WSC as the sole permittee.

On November 18, 2008, Aqua WSC filed its amendment to the Application. The Application, as amended, not only lists Aqua WSC as the sole applicant, but it also reduced the number of phases from 3 to 2 and reduced the maximum daily flow in the final phase. Specifically, the Application, as amended, requests authorization to discharge domestic wastewater at a daily average flow not to exceed 0.05 mgd in the sole interim phase and at a daily average flow not to exceed 0.25 mgd in the final phase. The proposed Double Eagle WWTP will still serve the Double Eagle Ranch development, and the proposed site for that WWTP remains the same.

Despite making these reductions to the Application, Aqua WSC agreed to renounce the Application- and to a broader audience. A combined NORI and NAPD of the amended Application was published as follows: (a) on February 5, 2009 in the *Bastrop Advertiser*; (b) on February 5, 2009 in *Ahora Sí!*, a Spanish language newspaper of general circulation in Bastrop County; and (c) on February 6, 2009 in the *Austin American Statesman*, a newspaper of general circulation in Bastrop County. The public comment period for the Application closed on March 9, 2009, and on May 8, 2009, the Executive Director filed his Response to Public Comments. The opportunity to timely request a contested case hearing with the TCEQ on this matter ended on June 10, 2009.

Again, no new hearing requests were filed after Aqua WSC replaced SCWC as the applicant and renounced the Application in three newspapers. Additionally, none of the entities that had requested a contested case hearing while SCWC sponsored the Application renewed their hearing requests after Aqua WSC took over and renounced the Application. Rather, as evidenced by the letter dated August 11, 2009, Double Eagle Estates, Ltd. (i) waives its right to receive any prior or future notices regarding Application and (ii) supports the Application and Draft Permit.<sup>4</sup>

### **III. LEGAL STANDARD FOR GRANTING REQUESTS FOR A CONTESTED CASE HEARING**

The TCEQ's rules in Title 30 TAC, Chapter 55, Subchapter F, outline the process by which the Commission evaluates requests for contested case hearings for TPDES permit

applications. Specifically, 30 TAC § 55.211 provides, in relevant part below, the circumstances under which the Commissioners should grant a request for a contested case hearing on a TPDES permit application:

- (c) A request for a contested case hearing shall be granted if the request is:
  - (1) made by the applicant or the executive director;
  - (2) made by an *affected person* if the request:
    - (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
    - (B) is timely filed with the chief clerk;
    - (C) is pursuant to a right to hearing authorized by law; and
    - (D) complies with the requirements of §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing).<sup>5</sup>

To this end, the Commission's rule regarding the determination of an "affected person" provides the following, in relevant part:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. *An interest common to members of the general public does not qualify as a personal justiciable interest.*
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - (1) whether the interest claimed is one protected by the law under which the application will be considered;
  - (2) distance restrictions or other limitations imposed by law on the affected interest;
  - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
  - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
  - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
  - (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.<sup>6</sup>

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<sup>4</sup> August 11, 2009 letter from Russell Parker, on behalf of Double Eagle Estates, Ltd. to the TCEQ, attached hereto as Exhibit C.

<sup>5</sup> 30 Tex. Admin. Code § 55.211(c) (2009) (emphasis added).

<sup>6</sup> 30 Tex. Admin. Code § 55.203(a) and (c) (2009) (emphasis added).

Additionally, 30 TAC § 55.205 provides the TCEQ's standard for determining when a group or association is an affected person. To have standing in an administrative hearing under the Texas Administrative Code, a group or association must meet the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.<sup>7</sup>

Given the Commission's standards for being deemed an affected person, an analysis of the requests for contested case hearing in this matter reveals that neither the landowners nor the RCIA have established a personal justiciable interest distinct from the general public that would entitle them to a contested case hearing regarding this Application.

#### IV. ANALYSIS OF THE HEARING REQUESTS

The TCEQ should deny all of the remaining requests for a contested case hearing in this matter because these landowners and RCIA do not meet the TCEQ's "affected person" standard under 30 TAC §§ 55.203 or 55.205. Additionally, it is important to note that all of these hearing requests were filed when SCWC initially filed the Application for a three phased, 0.75 mgd maximum flow permit; and none of these entities renewed their protests after Aqua WSC amended the Application and reduced the parameters sought by the Application. Regardless, most of allegations asserted in these contested case hearing requests do not address issues that are considered by the TCEQ in its analysis and decision of a TPDES permit application. Further, to the extent that the hearing requests raise an issue that is relevant to a TPDES permit application, each request fails to demonstrate how the hearing requestor is affected in a manner unique from the general public. As evidenced in the map of hearing requestors, attached hereto as Exhibit A, none of the requestors own land adjacent to the proposed Double Eagle WWTP or along the discharge route. Rather, Double Eagle Estates, Ltd. is the only landowner that abuts

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<sup>7</sup> 30 Tex. Admin. Code §55.205(a)(1)-(2) (2008). This three-prong test was derived from *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440 (Tex. 1993), which was adopted by the Texas Natural Resource Conservation Commission ("TNRCC") in 1999.

the Double Eagle WWTP site and the discharge route, and that limited partnership supports the Application.<sup>8</sup>

**A. LORI ZIMMERMAN, RICK CLEMENS, AND DARREN CARROLL FAIL TO EITHER ASSERT REFERABLE ISSUES OR DEMONSTRATE THAT THEY ARE AFFECTED PERSONS IN THEIR HEARING REQUESTS**

The TCEQ should deny each of the separate hearing requests filed by Lori Zimmerman, Rick Clemens, and Darren Carroll ("HR Group No. 1") in this matter because either (i) the issues raised by these individuals are not taken into consideration by the TCEQ in its processing of TPDES permit application or (ii) none of these hearing requestors have demonstrated that they could be impacted by the Application in a manner unique from the rest of the public.<sup>9</sup> Given the nature of the HR Group No. 1 claims regarding noise, vibrations, air pollution, aesthetics, plant relocation, and impacts to land and marine life, and the proximity of each of their residences to the Double Eagle WWTP site and discharge route, these individuals should not be considered affected persons entitled to a contested case hearing.

HR Group No. 1's claims that each of their properties would be impacted by the noise, vibrations, and aesthetics of the Double Eagle WWTP do not entitle them to a contested case hearing on the Application because none of these issues are considered by the TCEQ in its analysis of a TPDES permit application. As stated by the Executive Director's Response to Public Comments in this matter, "TCEQ does not address [noise, vibrations, and aesthetic impacts] in the wastewater permitting process."<sup>10</sup> Additionally, each of the HR Group No. 1 requestors assert that the TCEQ should relocate the Double Eagle WWTP site. This is not a referable issue as well. The Executive Director has specifically stated that "TCEQ rules do not allow the Executive Director to determine or mandate a different facility or discharge location."<sup>11</sup>

HR Group No. 1's request for a contested case hearing on the basis of odor/air pollution from the Double Eagle WWTP should be denied because these requestors are not impacted in a manner unique from the general public. Assuming, *arguendo*, that the Double Eagle WWTP

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<sup>8</sup> See Exhibits A and C.

<sup>9</sup> While each of these three individuals have filed their own hearing request, all three letters are nearly identical and assert the same claims.

<sup>10</sup> Executive Director's Response to Public Comments at pages 5-6 (Comment/Response to Comment 3).

<sup>11</sup> Executive Director's Response to Public Comments at page 10 (Comment/Response to Comment 8).



may emit odors, these requestors do not own land adjacent to the WWTP, and thus, their location is similar to the general public. As demonstrated by the map of hearing requestors, attached hereto as Exhibit A, Double Eagle Estates, Ltd. is the only landowner that is adjacent to the Double Eagle WWTP. Also, it is important to note that the Application designates buffer zones that are consistent with the TCEQ's buffer zone rule, 30 TAC § 309.13(e).

While the HR Group No. 1 requestors also assert that they are affected persons because the Application would impact "area wildlife" and marine life in Moss Branch Creek and the Lower Colorado River, their requests again fail to demonstrate how they are personally impacted in a manner unique from the general public. Rather, these hearing requests voice general concerns regarding these issues. As landowners that are not adjacent to the Double Eagle WWTP site or the discharge route, the discharge of effluent from that WWTP into Moss Branch Creek and the Lower Colorado River cannot uniquely impact these individuals. Further, the TCEQ does not have jurisdiction in this matter over how Double Eagle Estates, Ltd. decides to develop its currently rural tract. To the extent that wildlife roam on nature trails in the dense River Crossing subdivision<sup>12</sup> nearby the Lower Colorado River, such trails are upstream from the point at which Dry Creek flows into the Lower Colorado River, which is also over 2 river miles from the initial discharge point.

Lori Zimmerman's hearing request also urges the Executive Director to require Aqua WSC to employ membrane bioreactor technology at the Double Eagle WWTP. Again, however, this request does not qualify her as an affected person or entitle her to a contested case hearing. The Executive Director has already addressed this issue in his Response to Public Comments, providing that "TCEQ does not require an applicant to use a particular type of treatment technology."<sup>13</sup> For these reasons, the HR Group No. 1 requestors are not affected persons, and thus their requests for a contested case hearing should be denied.

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<sup>12</sup> The River Crossing subdivision is identified in the map of hearing requestors on Exhibit A. The subdivision is platted, whereby there are lots along the Colorado River.

<sup>13</sup> Executive Director's Response to Public Comments at page 9 (Comment/Response to Comment 7).

**B. WILLIAM AND DARLENE PENDELL ARE NOT AFFECTED PERSONS ON THE BASIS OF FLOODING**

William and Darlene Pendells' ("Pendells") request for a contested case hearing on the basis of flooding should be denied because they have failed to raise an issue that the TCEQ considers in processing a TPDES permit application. Specifically, the TCEQ does not take flooding issues into consideration in its analysis of a wastewater discharge permit application. As expressly stated by the Executive Director in his Response to Public Comments, the "TCEQ does not address flooding issues in the wastewater permitting process."<sup>14</sup> Thus, Pendells' claim that they would be impacted by flooding does not render them as affected persons entitled to a contested case hearing in this matter.

**C. RCIA'S HEARING REQUEST FAILS TO MEET THE TCEQ'S TEST FOR ASSOCIATIONAL STANDING**

The contested case hearing request filed by RCIA should also be denied by the TCEQ because this association cannot meet two of the three prongs of the TCEQ's test for an association to be deemed an affected person.<sup>15</sup> In short, the purposes of RCIA are not germane to Aqua WSC's Application, and RCIA's hearing request does not identify anyone that is entitled to a contested case hearing in their own right. For these reasons, RCIA is not an affected person, and thus it is not entitled to a contested case hearing in this matter.

*1. The Purpose of RCIA Is Not Germane to the Application*

RCIA's request for a contested case hearing fails to meet the TCEQ's associational standing test in 30 TAC § 55.205(2) because the purpose of RCIA is not germane to the subject matter of the Application. In its Articles of Incorporation ("Articles"), RCIA describes itself as a non-profit corporation consisting of property owners in the vicinity of the River Crossing Improvement Association. Additionally, RCIA's Articles provides that its purposes are the following:

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<sup>14</sup> Executive Director's Response to Public Comments at pages 11-12 (Comment/Response to Comment 9). Additionally, Aqua WSC disputes the Pendell's allegation that the creek bed of Moss Branch Creek (or any portion of the discharge route) is located on the Pendell's property.

<sup>15</sup> To successfully obtain associational party standing, an association must establish all 3 of the 30 TAC § 55.205 factors.

- (a) To promote the health, safety and welfare and provide necessary services to the residents of River Crossing Subdivision in Bastrop County, Texas.
- (b) To exercise all of the powers and privileges and perform all of the duties and obligations to the River Crossing Improvement Association as set forth in that certain Declaration of Covenants for River Crossing Subdivision Section One dated November 6, 1995, recorded in Volume 0773, Page 226, Deed Records of Bastrop County, Texas, and for River Crossing Subdivision Section Two dated March 1, 1998, recorded in Volume 3, Page 109 A & B, Deed Records of Bastrop County, Texas, reference to which is here made for all purposes.
- (c) To acquire by gift, purchase or otherwise, own, hold, improve, build upon, operated, maintain, convey, sell, lease, transfer, mortgage, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the River Crossing Improvement Association, subject to Part IV of the Texas Miscellaneous Corporation Laws and Act.
- (d) To do all other things necessary and properly to accomplish any and all purposes set out herein and to exercise all the general powers of a non-profit Corporation as set forth in Article 1396-2.02 of the Texas Non-Profit Corporation Act.<sup>16</sup>

None of these purposes relate to protesting wastewater discharge permit applications filed by neighboring landowners. Rather, the stated goals of RCIA relate to the day-to-day affairs within the River Crossing subdivision. While RCIA is empowered to promote the health, safety, and welfare and provide necessary services to its residents, such authority does not apply to the Application because the Double Eagle WWTP and discharge route are downstream of their subdivision. Thus, RCIA's goals are not germane to the Application, and therefore it is not entitled to party status in this matter under 30 TAC § 55.205.

*2. No RCIA Members Identified in Its Hearing Request Are Entitled to a Contested Case Hearing in Their Own Right*

RCIA's request for a contested case hearing also fails to meet the TCEQ's associational standing test in 30 TAC § 55.205(1) because none of the five members identified in RCIA's hearing request are affected persons entitled to a contested case hearing in their own right.<sup>17</sup> Like HR Group No. 1, RCIA's hearing request (i) raises issues that are not taken into consideration by the TCEQ in its processing of a TPDES permit application and (ii) does not

<sup>16</sup> A copy of RCIA's Articles are attached hereto as Exhibit D.

<sup>17</sup> RCIA's hearing request is signed by Catherine Roberts, Bryce Johnson, Marcy Bernasconi, Bill Pendell, and Dinah Van Peski.

assert that the Association could be impacted by the Application in a manner unique from the rest of the public. Here, RCIA's hearing request includes the same arguments stated in the HR Group No. 1 hearing requests. As such, Aqua WSC reasserts its argument provided in Section IV.A, *supra*. Thus, none of these five RCIA members are affected persons entitled to a contested case hearing in their own right. For these reasons, RCIA's hearing request should be denied.

**D. BENNIE H. WALLACE, JR. AND ELIZABETH F. WALLACE'S HEARING REQUEST FAILS TO PROVIDE A BASIS TO BE DECLARED AFFECTED PERSONS**

The TCEQ should deny the hearing request filed by Bennie H. Wallace, Jr. and Elizabeth F. Wallace ("Wallaces") because either (i) the issues raised in their hearing request are not taken into consideration by the TCEQ in its processing of TPDES permit application or (ii) none of these hearing requestors have demonstrated that they could be impacted by the Application in a manner unique from the rest of the public. Wallaces request for a contested case hearing on the based of noise, vibration, aesthetics, alternate locations, erosion, pollution from plant failure, odors, discharge limits, and buffer zones. However, given the nature of these claims and the proximity of their residence from the Double Eagle WWTP and discharge route, they are not affected persons entitled to a contested case hearing.

Several of Wallaces' above-listed allegations are not addressed by the TCEQ in a wastewater permit application. Like HR Group No. 1, Wallaces' allegations that their property would be impacted by the noise, vibrations, air pollution, and aesthetics of the Double Eagle WWTP are not considered by the TCEQ in the analysis of a TPDES permit application. As stated in Section IV.A., above, the Executive Director has stated that these issues are not addressed in a TPDES matter.<sup>18</sup> Additionally, Wallaces assert that the TCEQ should relocate the Double Eagle WWTP site. Again, the Executive Director has clarified that this is not a referable issue.<sup>19</sup> Wallaces further claim that significant erosion will occur to Moss Branch Creek as a result of the proposed Double Eagle WWTP. However, the TCEQ has explained in its Response to Public Comment that "downstream erosion related to flooding is not typically addressed in the wastewater permitting process."<sup>20</sup> Further, even if erosion was an issue addressed by the TCEQ,

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<sup>18</sup> Executive Director's Response to Public Comments at pages 5-6 (Comment/Response to Comment 3).

<sup>19</sup> Executive Director's Response to Public Comments at page 10 (Comment/Response to Comment 8).

<sup>20</sup> Executive Director's Response to Public Comments at page 18 (Comment/Response to Comment 16).

Wallaces' property is upstream and not adjacent to the discharge route, and they would not experience (and have not alleged how they could experience) any of the impacts of erosion. In other words, Wallaces cannot be impacted by any erosion that could occur in a manner unique from the rest of the general public.

Wallaces' claims requesting that the Draft Permit include (1) the most stringent restrictions on the Double Eagle WTP with respect to discharge and (2) considerable buffer zones are moot as such issues have been addressed in the revised Draft Permit. The Effluent Limitations contained in the Draft Permit represent some of the TCEQ's most stringent discharge limitations. Initially, SCWC's requested authorization to discharge effluent from the proposed Double Eagle WTP with limitations of 10 mg/l of carbonaceous biochemical oxygen demand (5- day), 15 mg/l of total suspended solids, and no other limitations. Clearly, the Effluent Limitations provided in the Draft Permit are far more restrictive. As to the buffer zones, the Application provides in Exhibit "H" that the buffer zones will meet the TCEQ's minimum buffer zone requirements.

Next, Wallaces are not entitled to a contested case hearing on the basis of odors emanating from the proposed Double Eagle WWTP because they are not (and have not asserted how they could be) impacted by odors in a manner unique from the general public. Here, Wallaces have stated in their hearing request that they are "seriously concerned about odors from the plant." Asserting general concerns do not merit being deemed affected persons. Regardless, when considering the relationship between Wallaces' assertion and the Application, their claim, like the HR Group No. 1 hearing requests, does not meet the TCEQ's standing requirements. In short, the Wallaces' property is located approximately  $\frac{3}{4}$  mile away from the Double Eagle WWTP site. Given these facts, it is unreasonable to conclude that Wallaces would be uniquely impacted by odors from the WWTP. Also, as stated above, the Application includes the requisite buffer zones.

Wallaces' are also not affected persons on the basis that "significant pollution" would occur in the event of a discharge due to a plant failure/bypass. Upon issuance of the Draft Permit by the TCEQ, Aqua WSC will be required to abide by the terms of that authorization. For these reasons, Wallaces' are not affected persons entitled to a contested case hearing.

## **V. CONCLUSION**

In addition to the fact that none of the hearing requestors renewed their protest of the Application upon Aqua WSC's amendment of the Application, none of the impacts alleged by the hearing requestors meet the Commission's standard to be declared an affected person. Consequently, none of the requestors are entitled to a contested case hearing on the Application for any issue raised. The hearing requests from HR Group No. 1 fail to (i) raise an issue within the jurisdiction of the Commission regarding the Application and (ii) demonstrate that these requestors are impacted by the Application in a manner unique from the general public. The hearing requests filed by the Pendells and Wallaces also fall short for these same reasons. Additionally, the issues raised by the Wallaces regarding effluent limits and buffer zones have already been addressed by Aqua WSC and the TCEQ, and are moot. RCIA's hearing request fails to meet the TCEQ's three-pronged test to obtain associational standing. Specifically, RCIA fails to meet the first prong of the test and demonstrate that one or more members of the group or association would otherwise have standing to request a hearing in his or her own right. Additionally, RCIA's request for a contested case hearing did not demonstrate how the issues raised in the hearing request were germane to the organization's purpose. For these reasons, Aqua WSC requests that the TCEQ deny these hearing requests and grant the Draft Permit as written.

## **VI. PRAYER**

Aqua Water Supply Corporation respectfully requests that the Commissioners of the Texas Commission on Environmental Quality deny all of the pending requests for a contested case hearing on all grounds in this matter. The corporation further requests that the Commissioners approve and issue the Executive Director's Draft Permit, granting Aqua Water Supply Corporation Texas Pollutant Discharge and Elimination System Permit No. WQ0014833001, without revision.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

(512) 322-5800

(512) 472-0535 (Fax)



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DAVID J. KLEIN

State Bar No. 24041257

ROBERT LLOYD

State Bar No. 12453000

**ATTORNEYS FOR AQUA WATER SUPPLY  
CORPORATION**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2009, the original and eight true and correct copies of Aqua Water Supply Corporation's Response to Hearing Requests were filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk; and a complete copy was sent by either facsimile, electronic mail and/or first class mail to all persons on the attached mailing list.

  
David J. Klein

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
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Mailing List  
Aqua Water Supply Corporation  
TPDES Permit No. WQ0014833001

FOR THE EXECUTIVE DIRECTOR via  
electronic mail:

Celia Castro, Staff Attorney  
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FOR PUBLIC INTEREST COUNSEL via  
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FOR OFFICE OF PUBLIC ASSISTANCE via  
electronic mail:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK via electronic mail:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

HEARING REQUESTORS

Darlene Pendell  
205 Sabine Drive  
Cedar Creek, Texas 78612-3585

Madison Jechow  
Lower Colorado River Authority  
P. O. Box 220  
Austin, Texas 78767-0220

Leigh Sebastian  
Lower Colorado River Authority  
P. O. Box 220  
Austin, Texas 78767-0220

William Medaille  
Lower Colorado River Authority  
P. O. Box 220  
Austin, Texas 78767-0220

Dee Czora  
Bastrop County Development  
806 Water Street  
Bastrop, Texas 78602-3832

Shirley Adams  
164 Saldana Drive  
Cedar Creek, Texas 78612-3394

Marcy Bernasconi  
534 Colorado Drive  
Cedar Creek, Texas 78612

Marcy Bernasconi and Bill Pendell  
P. O. Box 3485  
Austin, Texas 78764-3485

Darren S. Carroll  
295 Colorado Drive  
Cedar Creek, Texas 78612-3488

Bennie and Elizabeth F. Wallace  
450 Colorado Drive  
Cedar Creek, Texas 78612-3580

Dinah Van Peski  
P. O. Box 3485  
Austin, Texas 78764-3485

Nell Carroll  
River Crossing  
295 Colorado Drive  
Cedar Creek, Texas 78612-3488

Rick Clemens  
142 Llano Court  
Cedar Creek, Texas 78612-3405

Sonja Eagle and Robert Pipe  
138 Trinity Street  
Cedar Creek, Texas 78612-3563

Mr. and Mrs. Earl Gillum  
179 Palo Duro Drive  
Cedar Creek, Texas 78612-3415

David Gonzales  
384 Colorado Drive  
Cedar Creek, Texas 78612

Don Heller  
130 Sabine Drive  
Cedar Creek, Texas 78612-3408

Bryce A. Johnson  
Catherine E. Roberts  
P. O. Box 3485  
Austin, Texas 78764-3485

Jeff Long  
316 Old 71  
Cedar Creek, Texas 78612-3490

Shelley and Stefan Lubinski  
161 Colorado Drive  
Cedar Creek, Texas 78612-3401

Chad and Gwen Martin  
229 Estate Row  
Cedar Creek, Texas 78612-3902

Chad Martin  
229 Estate Row  
Cedar Creek, Texas 78612-3902

Lori Zimmerman  
141 Llano Court  
Cedar Creek, Texas 78612-3405

INTERESTED PERSONS:  
The Honorable Tim Kleinschmidt  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2910

Robert Martinez  
207 Pavilion Drive  
Cedar Creek, Texas 78612-3907

Frederick Mendes  
111 Trinity  
Cedar Creek, Texas 78612-3400

Darlene and William Pendell  
205 Sabine Drive  
Cedar Creek, Texas 78612-3585

Robyne and Scott Rebman  
143 Colorado Bluff  
Cedar Creek, Texas 78612

Kay Reid  
456 Pope Bend N  
Cedar Creek, Texas 78612

Lance Roberson  
225 Old 71  
Cedar Creek, Texas 78612

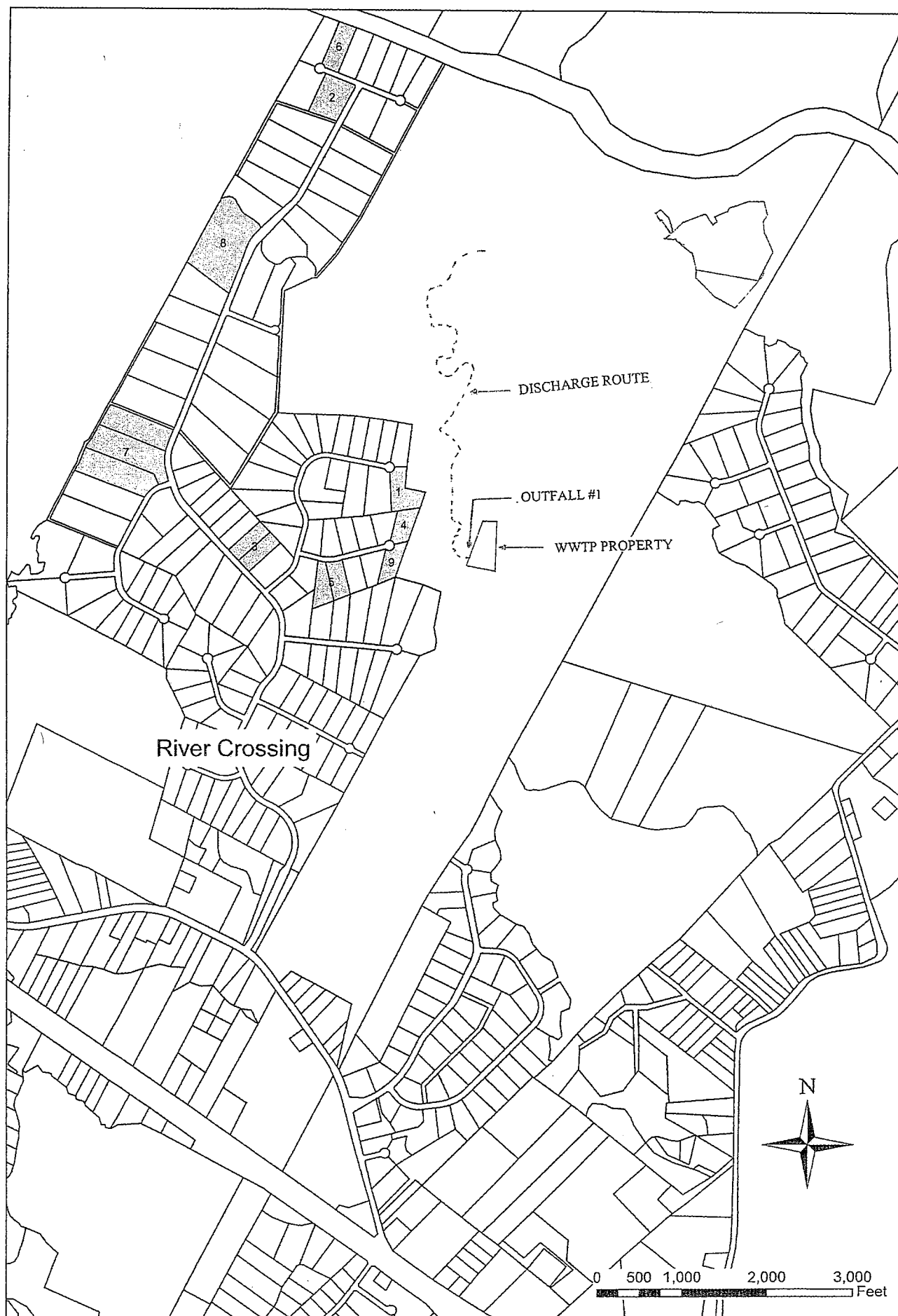
Julie Salem and  
Regis Stevenson  
520 Pope Bend Road  
Cedar Creek, Texas 78612

Diana Shackelford  
114 Pecos  
Cedar Creek, Texas 78612

Deena Spellman  
316 Old 71  
Cedar Creek, Texas 78612-3490

Greg Wieland  
222 Colorado Drive  
Cedar Creek, Texas 78612-3488

# Map of Contested Case Hearing Requestors



## **Legend – Contested Case Hearing Requesters Map**

1. Darlene and William Pendell R76690
2. Marcy Bernasconi R80563
3. Darren S. Carroll R76706 & R76707
4. Rick Clemens R76678
5. Bryce Johnson R76671 & R76673
6. Catherine Roberts R80560
7. Dinah Van Peski R76721 & R767622 & R76723
8. Bennie H. and Elizabeth F. Wallace R80569
9. Lori Zimmerman R76677



May 15, 2009

Ms. LaDonna Castañuela  
Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

**RE:** Withdrawal of Request for Contested Case Hearing  
Aqua Water Supply Corp. Application for TPDES Permit No. WQ0014833001  
Double Eagle Ranch Wastewater Treatment Plant in Bastrop County

Dear Ms. Castañuela,

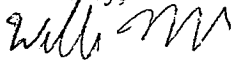
In a letter from Leigh Sebastian to your office dated November 12, 2007, the Lower Colorado River Authority ("LCRA") protested and requested a contested case hearing on the application by the South Central Water Company for Texas Pollution Discharge Elimination System Permit No. WQ0014833001 to authorize a discharge of treated wastewater from the Double Eagle Ranch development in Bastrop County. That letter expressed a number of concerns that LCRA held regarding the nature of the applicant, the volume of the discharge sought (750,000 gallons per day), potential conflicts with regionalization of wastewater systems and with LCRA's Windmill Ranch Wastewater Treatment Plant, and the fact that LCRA had not been contacted about the possibility of providing wastewater treatment services.

Since that letter was written, LCRA has attended a public meeting on the permit held by Aqua Water Supply Corporation on July 15, 2008, and has seen amendments to the permit application and draft permit. Many of LCRA's concerns have been addressed by changing the permit applicant from South Central Water Company to Aqua Water Supply Company, and by reducing the volume of the permit to 250,000 gallons per day. Additionally, the applicant has been willing to work with LCRA, both at the public meeting and elsewhere, to address LCRA's concerns about regionalization and potential conflict between systems.

Since LCRA's central concerns have been addressed by the applicant, LCRA would like to now formally withdraw its request for a contested case hearing and withdraw its protest to this discharge permit application.

If you have any questions on this matter, please do not hesitate to call me at (512) 473-4046. Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Will Medaille', written in a cursive style.

William Medaille  
Associate General Counsel  
Lower Colorado River Authority

cc: Robin Lloyd, Lloyd Gosselink

# DOUBLE EAGLE ESTATES, LTD.

P.O. Box 163265  
AUSTIN, TEXAS 78716-3265

RUSSELL PARKER  
(512) 657-6462

August 11, 2009

Ms. LaDonna Castañuela, Chief Clerk  
Texas Commission on  
Environmental Quality  
Office of the Chief Clerk, MC-105  
12100 Park 35 Circle, Building F  
Austin, Texas 78753

VIA HAND DELIVERY

Re: Aqua Water Supply Corporation's Application for a Texas Pollutant Discharge  
Elimination System Permit, No. WQ0014833-001; TCEQ Docket No. 2009-0896-MWD

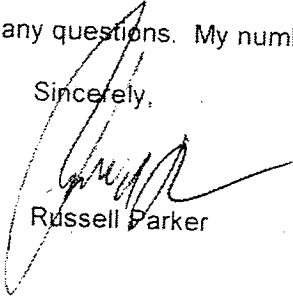
Dear Ms. Castañuela:

I am Russell Parker, President of Development Associates Group of Central Texas, Inc., which is the general partner of Double Eagle Estates, Ltd. ("Double Eagle"). In this role, I manage Double Eagle Estates, Ltd., and I am knowledgeable of its assets. Additionally, I am knowledgeable of the above-referenced application (the "Application").

To this end, I want to clarify to the Texas Commission on Environmental Quality ("TCEQ") that Double Eagle is the sole owner of all of the land that is adjacent to Aqua Water Supply Corporation's proposed wastewater treatment plant site and at least the first mile of the proposed discharge route. Further, I understand that under the rules of the TCEQ, Double Eagle is entitled to receive notice by mail of the Application and of all public meetings and hearings involving the Application. By this letter, I submit to the TCEQ that Double Eagle (1) waives its right to receiving of any and all notices already issued in this matter, (2) supports the Application, and (3) requests to be added to the list of interested persons for this matter.

Do not hesitate to contact me if you have any questions. My number is (512) 657-6462.

Sincerely,



Russell Parker

Cc: Mr. John Burke  
Mr. David Klein  
Mr. Michael Redda

**ARTICLES OF INCORPORATION  
OF  
RIVER CROSSING IMPROVEMENT ASSOCIATION, INC.**

FILED  
In the Office of the  
Secretary of State of Texas

JAN 28 2000

*Corporation Section*

The undersigned natural person of the age of eighteen (18) years or more, who is a citizen of the State of Texas, acting as Incorporator of a Corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such Corporation:

**ARTICLE I**

The name of the Corporation is River Crossing Improvement Association, Inc.

**ARTICLE II**

The Corporation is a non-profit Corporation, no part of the income of which is distributed to any member, director or officer and no part of the net earnings of which shall inure to the benefit of any private stockholder, or member or individual.

**ARTICLE III**

The period of its duration is perpetual.

**ARTICLE IV**

The purpose or purposes for which the Corporation is organized are:

- (a) To promote the health, safety and welfare and provide necessary services to the residents of River Crossing Subdivision in Bastrop County, Texas.
- (b) To exercise all of the powers and privileges and perform all of the duties and obligations to the River Crossing Improvement Association as set forth in that certain Declaration of Covenants for River Crossing Subdivision Section One dated November 6, 1995, recorded in Volume 0773, Page 226, Deed Records of Bastrop County, Texas, and for River Crossing Subdivision Section Two dated March 1, 1998, recorded in Volume 3, Page 109 A & B, Deed Records of Bastrop County, Texas, reference to which is here made for all purposes.
- (c) To acquire by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, mortgage, dedicate for public use or otherwise dispose of real or personal property in connection



with the affairs of the River Crossing Improvement Association, subject to Part IV of the Texas Miscellaneous Corporation Laws and Act.

- (d) To do all other things necessary and property to accomplish any and all purposes set out herein and to exercise all the general powers of a non-profit Corporation as set forth in Article 1396-2.02 of the Texas Non-Profit Corporation Act.

#### ARTICLE V

The street address of the initial Registered Office of the Corporation is 5030 Champions, Lufkin, Texas 75901.

#### ARTICLE VI

The name of its Registered Agent at such address is James E. Brasse.

#### ARTICLE VII

The number of Directors constituting the initial Board of Directors is three (3) and the names and addresses of the persons who are to serve as the initial Directors are:

<u>NAME</u>	<u>ADDRESS</u>
Chris K. Van Peski	108 Palo Duro Cedar Creek, Texas 78612
Doyle G. Whiting	4416 Forest Lakes Drive, Del Valle, Texas 78617
Frederick R. Mendes	P. O. Box 141953, Austin, Texas 78714

#### ARTICLE VIII

The name and street address of the Incorporator is:

James E. Brasse  
Sabine Investment Company of Texas, Inc.  
5030 Champions  
Lufkin, Texas 75901

#### ARTICLE IX

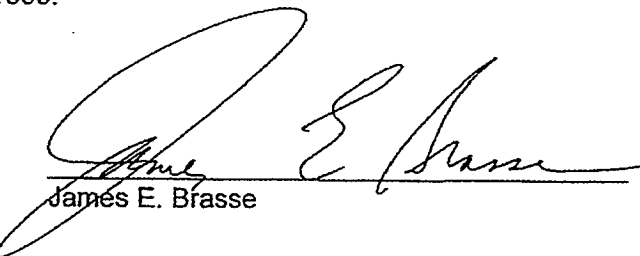
The Corporation shall have members as set forth in the Declaration of Covenants by Sabine Investment Company of Texas, Inc. for River Crossing Subdivision Section One dated November 6, 1995, recorded in Volume 0773, Page 226, Deed Records of Bastrop County, Texas, and for River Crossing Subdivision Section Two dated March 1, 1998, recorded in Volume 3, Page 109

A & B; Deed Records of Bastrop County, Texas, with the voting rights set forth therein. The members may be subject to assessment as set forth in said Declaration of Covenants. Members shall be entitled to vote by proxy.

#### ARTICLE X

The Corporation may be dissolved with the affirmative vote of not less than one-half (1/2) of each Class of Membership. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate agency to be used for purposes similar to those for which the Corporation was created. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

IN WITNESS WHEREOF, I have hereunder set my hand this 18th day of February, 1999.

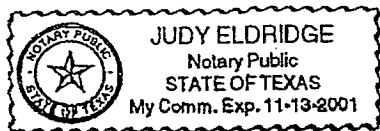
  
James E. Brasse

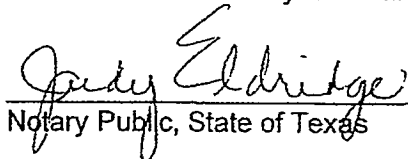
THE STATE OF TEXAS           §

COUNTY OF ANGELINA       §

I, Judy Eldridge, a Notary Public, do hereby certify that on this 18th day of February, 1999, personally appeared before me, James E. Brasse, who is being by me first duly sworn, declared that he is the person who signed the foregoing document as Incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first written.



  
Notary Public, State of Texas